ed. She did not do it later because the hotel Management told her not to tell anybody and that she would be compensated for her loss. The first plaintiff identified Mr. Goh Koh Pui as the person who told this to her. Mr. Goh was called by the defendants. He denied the allegation. I accept Mr. Goh's evidence.

On April 2, 1975 i.e. the day after the theft the second plaintiff saw Mr. Aeria again. The second plaintiff went to Mr. Aeria's office and told him that in addition to the articles of jewelry already reported lost, he wanted him to note additional items that they had since discovered were also lost. These were a pair of earrings and some clothing material. Mr. Aeria says that the second plaintiff did not talk about the value of all the articles that had been lost. The second plaintiff had an opportunity to correct the so-called mistake and place on record that the value of the jewellery lost was US$250,000 and not US$100.000 as previously reported but he did not do this.

In my judgment, on the evidence in this case, the first plaintiff is entitled to recover from the defendants the sum of U.S.$100,000 for all her property that was stolen from suite 2626 of the defendants' hotel on April 1, 1975.

The second plaintiff is entitled to recover all that he claims save and except that in respect of the lost traveller's cheques he is entitled to recover only U.S. $1,600 which is the amount he is now being called upon to refund to the American Express Co. who had earlier reimbursed him with the full amount of U.S.$2,000. Accordingly he is entitled to S$3,904 only in respect of the traveller's cheques.

The plaintiffs are also entitled to recover $590.30 being the cost of replacing their three suitcases which were broken open by the thief.

Accordingly there will be judgment for the plaintiffs against the defendants in the sum of S$249,404 which is made up as follows:—

First plaintiff	— U.S.$100,000 =	S$244,000.00
Second plaintiff		4,813.70
Suitcases		590.30
		S$249,404.00

The defendants will pay the plaintiffs' costs of this action as taxed.

Judgment for the plaintiffs.

Solicitors: *Ong & Chellam.*

SINGAPORE WOODCRAFT MANUFACTURING CO. (PTE.) LTD. v. MOK AH SAI

[O.C.J. (Choor Singh J.) April 23, 1979]

[Singapore — Civil Suit No. 3348 of 1976]

Contract — Frustration — Impossibility of performance — Claim for refund of money paid under agreement — Frustrated Contracts Act (Cap. 33), s. 2(1) — Law Reform (Frustrated Contracts) Act, 1943 (U.K.), s. 1.

Landlord and Tenant — Land Acquisition — Notice of Possession served on landlord — Effect of — Land Acquisition Act (Cap. 272), ss. 16(1), 18 & 47.

The defendant in this case was the tenant of premises known as Nos. 110/112 Orchard Road, Singapore. He paid a monthly rent of $215 to the owners of the property. By an agreement dated November 21, 1968, the defendant had agreed to permit the plaintiffs to display for sale at the premises goods, wares and merchandise belonging to the plaintiffs in return for commission of 2½% on all goods sold to be calculated every six months or if the amount of commission so payable for the same period fell below the sum of $9,000, the plaintiffs were to make it up to that sum. The contract was for ten years and there was no provision in the contract for earlier termination.

Evidence revealed that the defendant took no part in the business of the plaintiffs. Instead, he consistently throughout the whole period up to December 31, 1975 received the sum of $1,500 per month from the plaintiff.

On May 23, 1975 the Collector of Land Revenue by Notice of Possession served on the defendant's landlord, took possession of the premises. He did not take physical possession of the premises until December 31, 1977. In the meantime the plaintiffs continued to occupy the premises and to pay the defendant $1,500 per mensem until December 31, 1975 when they stopped upon discovering that the premises had vested in the State as far back as May 23, 1975.

The main issue before the court was the date on which the contract was frustrated. The plaintiffs claimed that it was frustrated on May 23, 1975 and the defendant argued that the contract was frustrated on December 31, 1977.

Held: (1) the agreement of November 21, 1968 was a device to conceal a sub-tenancy agreement between the parties at the monthly rent of $1,500. The agreement was drawn up to circumvent the application of the Control of Rent Act which prohibits a tenant from collecting from his sub-tenant more than 110% of the rent which he himself pays to his landlord;

(2) the correct legal test for deciding whether a contract has been frustrated is whether the contract which the parties made is, on its true construction, wide enough to apply to the new situation: if it is not, then it is at an end;

(3) in this case, whatever rights the defendant had in the premises were extinguished on May 23, 1975 when the State became the owner of the premises;

(4) the footing on which the agreement was entered into was gone and the contract clearly was frustrated.

Case referred to:-

(1) *Davis Contractors Ltd.* v. *Fareham Urban District Council* [1956] A.C. 696.

CIVIL SUIT.

Kirpal Singh for the plaintiffs.

P.T. Wong for the defendant.

Choor Singh J.: The plaintiffs' claim against the defendant is for the refund of a deposit of $18,000 paid by the plaintiffs to the defendant under an agreement between the parties in writing dated November 21, 1968 and for the refund of a further sum of $10,838.70 paid by the plaintiffs to the defendant under the said contract which the plaintiffs allege is repayable to them:

(a) under the Frustrated Contracts Act (Cap. 33);
(b) for failure of consideration;
(c) as money paid under a mistake of fact.

The facts are these. On November 21, 1968 the defendant was the tenant of premises known as Nos. 110/112 Orchard Road, Singapore, comprising a ground and a first floor. He paid a rent of $215 per mensem to the Estate of Chee Guan Chiang deceased, the owners of the property.

According to an agreement which the parties signed on November 21, 1968, the defendant was to permit the plaintiffs to display for sale at the premises goods, wares and merchandise belonging to the plaintiffs in return for commission of 2½% on all goods sold and delivered to and paid for by customers to be calculated every six months or if the amount of commission so payable for the same period fell below the sum of $9,000, the plaintiffs were to make it up to that sum. The contract was for ten years and there was no provision in the contract for earlier termination.

Although the agreement describes the plaintiffs as "the principal" and the defendant as "agent" and the agreement is claimed by the defendant to be an agency agreement, this is not borne out by the evidence.

The evidence shows that the plaintiffs occupied the whole of the first floor and three-quarters of the ground floor of the premises. The remaining quarter portion of the ground floor was occupied by the defendant where he carried on his own business. The defendant took no part in the business of the plaintiffs. This was not denied by the defendant who admitted in cross-examination that apart from providing the accommodation already mentioned, he did not carry out any of the other acts as required of him under the agreement. He consistently, throughout the whole period up to December 31, 1975 received the sum of $1,500 p.m. from the plaintiffs. There was no question of any accounts of the plaintiffs being examined or commission being calculated. The plaintiffs had exclusive possession of the first floor and of their area on the ground floor. They employed their own staff, made sales themselves, delivered goods sold by them, kept all accounts and installed and paid for their telephone. The defendant did nothing, apart from collecting $1,500 p.m. from the plaintiffs. He did not perform any act from which the relationship of principal and agent can be inferred.

In my judgment, the agreement in writing of November 21, 1968 was a device to conceal the real agreement between the parties which was the granting of a sub-tenancy to the plaintiffs at the monthly rent of $1,500. The agreement was drawn up in the manner of its terms to circumvent the application of the Control of Rent Act which prohibits a tenant from collecting from his sub-tenant more than 110% of the rent which he himself pays to his landlord.

The Collector of Land Revenue (hereinafter referred to as "the Collector") compulsorily acquired the premises by Notification No. 3107 dated October 8, 1974 published in the *Government Gazette* Extraordinary dated October 10, 1974. On May 23, 1975 the Collector by notice of possession served on the defendant's landlord, the Estate of Chee Guan Chiang deceased, took possession of the premises.

Although the Collector took possession in law on May 23, 1975 by notice of possession issued under section 16(1) of the Land Acquisition Act (hereinafter referred to as "the Act"), he did not take physical possession of the premises until December 31, 1977, and in the meantime both the defendant and the plaintiffs continued to occupy their respective portions of the premises. The plaintiffs continued to pay the defendant $1,500 per mensem until December 31, 1975 when they stopped upon discovering that the premises had vested in the State as far back as May 23, 1975.

The plaintiffs now claim that the contract was frustrated on May 23, 1975 when the Collector served on the defendant's then landlord the notice of possession. The defendant contends that the contract was not frustrated on that date, but on December 31, 1977 when the Collector took physical possession of the premises.

The main issue before me is, was the contract frustrated on May 23, 1975? Section 2(1) of the Frustrated Contracts Act (Cap. 33) provides:

"Where a contract has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to the provisions of section 3 of this Act, have effect in relation thereto."

The above provision is similar to the English provision — section 1 of the Law Reform (Frustrated Contracts) Act, 1943, except that the English Act applies only to a contract governed by English law.

The crucial words in section 2(1) of the Act are:

"impossible of performance"

or

"been otherwise frustrated".

The correct legal test for deciding whether a contract has been frustrated has been laid down in the majority judgment of the House of Lords in *Davis Contractors Ltd.* v. *Fareham Urban District Council.*[1] Lord Reid put the test for frustration in a nutshell when he said, at page 721:

"... The question is whether the contract which they did make is, on its true construction, wide enough to apply to the new situation: if it is not, then it is at an end...."

The new situation in this case occurred on May 23, 1975 when following the service of the notice of possession on the owners of the property by the Collector, all interests in and arising out of the said property came to an end. Upon service of the notice of possession under section 16(1) of the Act, section 18 of the Act came into operation, the effect of which is that the land became vested in the State free from encumbrance. This resulted in the termination of the agreement between the parties by operation of law on the emergence of this fundamentally different situation. The owner of the premises lost all his rights to the property and the defendant lost his tenancy of the premises. The footing on which the agreement was entered into was gone and the contract clearly was frustrated.

Counsel for the defendant submits that the legal effect of the notice of possession of May 23, 1975 was that the Collector became the defendant's new landlord in the place of the old landlord; that there was a legal change in the ownership of the premises; that that was all that happened and that the defendant remained the tenant of the premises as continuance is presumed in the absence of any notice to quit.

I reject this submission. The Collector does not have to issue a notice to quit to get rid of the tenant or other occupiers of the property after he has served a notice of possession. If the Collector is opposed or impeded thereafter in taking possession, he may apply to the Commissioner of Police who must enforce the surrender of the land to the Collector. See section 47 of the Act. As the land vests in the State upon the operation of section 18 of the Act, the State Lands Act (Cap. 285) operates on the land and the land may be dealt with in any manner authorised by the State Lands Act. Furthermore, the State Lands Encroachments Act (Cap. 286) applies to the land with all the powers therein granted to the officers of the State to remove unauthorised persons from the land. In short, the State is absolute owner of the land following the notice of possession recognising no interest or encumbrance previously affecting the land.

The word "encumbrances" as appearing in section 18 of the Act has the widest possible meaning. It obviously applies to such recognised interests as leases, sub-leases and mortgages. It also applies to lesser rights such as easements, rights of way, profits a prendre, customary rights and trust rights. Even a mortgagee's rights are removed from the land and affixed to the compensation money.

In this case, whatever rights the defendant had in the premises were extinguished on May 23, 1975 when the State became the owner of the premises. Thereafter the Collector could have issued to the defendant a temporary occupation licence. Such licences are issued, as pointed out by the Collector who gave evidence for the plaintiffs, to the actual occupants of the premises. This means that the plaintiffs also would have been issued with such a licence if the Collector was minded to do so, but in fact no such licence was issued to anyone in this case. Without a temporary occupation licence, the defendant had no rights at all in the premises after May 23, 1975 and no right to collect any money from the plaintiffs after that date.

In my judgment the plaintiffs are entitled to recover from the defendant their refundable deposit of $18,000 and also the sum of $10,838.70 which they paid to the defendant in respect of the period May 24, 1975 to December 31, 1975.

The defendant counterclaims for 2½% commission on the sale of the plaintiffs' goods or $9,000 for every six months, whichever is higher from January 1, 1976. On the evidence, this counterclaim clearly fails and is rejected.

There will be judgment for the plaintiffs against the defendant in the sum of $28,838.70 together with interest at six per cent per annum from date of the writ until payment. The defendant will also pay the plaintiffs' costs of this action as taxed. The defendant's counterclaim is dismissed with costs.

Claim allowed; Counterclaim dismissed.

Solicitors: *Kirpal Singh & Co.; P.T. Wong & Co.*

H.S. RAO & ANOR. v. A. ABDUL WAHAB & CO.

[O.C.J. (Sinnathuray J.) July 27, 1979]
[Singapore — Motion in Suit No. 3403 of 1978]

Trade Marks — Interim injunction — Sale of incense joss-sticks under similar trade mark for over five years — No urgency to restrain defendants — Interim injunction discontinued.

The plaintiffs in this case obtained an *ex parte* interim injunction against the defendants to restrain them from infringing the plaintiffs' registered trade mark by importing, selling or offering for sale incense joss-sticks under the trade mark known as "Sugandhari Sangam", or any other trade mark similar to the plaintiffs' registered trade mark.

An *inter partes* hearing was held to decide whether the interim injunction should be continued.

Held: there was no urgency in having the defendants restrained by the continuation of the interim injunction as the defendants had shown that the offending labels and wrappers had been used since eight years ago and known to the plaintiffs for at least five years.

MOTION IN SUIT.

R. Joethy for the plaintiffs.

Mrs. Murgiana Haq for the defendants.

Cur. Adv. Vult.

Sinnathuray J.: An *ex parte* interim injunction was in force in favour of the plaintiffs, Aravinda Parimala Works, against the defendants, A. Abdul Wahab & Co. (and their servants and/or agents) restraining them from infringing the plaintiffs' registered Trade Mark No. 50631 by importing, selling or offering for sale incense joss-sticks under the trade mark known as "Sugandhari Sangam" contained in labelled cartons or wrapped packages, or any other trade mark or marks which are in any way deceptively similar to or a colourable imitation of the plaintiffs' registered trade mark, and, also from passing off or attempting to pass off or causing, enabling or assisting others to pass off the said "Sugandhari Sangam" or any colourable imitation thereof as and for the goods of the plaintiffs.

At the *inter partes* hearing of the notice of motion for the continuation of the interim injunction order, after hearing counsel for the plaintiffs and the defendants, and upon an undertaking by the defendants to keep strict accounts of all sales of their product, I ordered that the interim injunction be discharged. I now give the reasons for the decision.

There were two issues for decision. The first was whether, on the facts, there was an urgency that the plaintiffs should be protected by the continuation of the *ex parte* interim injunction. The second was whether the plaintiffs would suffer irreparable damage if the interim injunction was discharged.